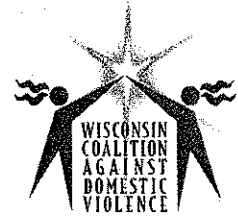


Memo



To: Members of the Senate Committee on Labor, Elections, & Urban Affairs

From: Josh Freker, Policy Director, WCADV, 608-255-0539 or joshf@wcadv.org

Date: November 28, 2007

Re: Testimony in support of Senate Substitute Amendment 1 to SB 269

Thank you for providing an opportunity to share my organization's perspective on SB 269, which is sponsored by Senator Spencer Coggs and Representative Scott Suder, and cosponsored by a broad, bipartisan array of lawmakers. I represent the Wisconsin Coalition Against Domestic Violence, the statewide voice for victims of domestic violence and the local programs in every county of our state that serve them. I'm here today to speak in support of Senate Substitute Amendment 1 to SB 269.

Last week, the Wisconsin Department of Justice released figures that identify 40 individuals who were murdered in 2006 due to domestic violence. We don't yet have figures for 2007, but unfortunately we've seen a number of high profile domestic violence homicides this year as well. These homicides are a tragic illustration of the very real dangers facing victims of domestic violence when they try to leave a violent relationship. Advocates work each day to help victims evaluate their options for leaving before the violence reaches such a horrible conclusion. The Safe Housing Act represents an opportunity for us to remove two of the many obstacles to victims breaking free from their abusers and achieving safety.

Many people ask, "Why didn't she leave?" when listening to stories about battered women. People ask this because they are not familiar with the extremely difficult choices facing these victims. While living under constant threats, manipulation and abuse, victims find the strength to carefully plan how to leave a relationship safely and how to find solutions to the potential problems of living with a much smaller income, no health care, no child care, and possibly no home.

Domestic violence victims may be otherwise prepared to leave an abusive relationship, yet some landlords refuse to allow a termination of a lease without the victim incurring severe financial hardship, even if victims can demonstrate that they are in imminent danger. When forced to choose between staying in a violent relationship or having to pay rent for two apartments—on top of other financial constraints—many victims feel their only choice is to remain in the abusive relationship. This is an unnecessary barrier that we can remove by passing the Safe Housing Act.

Although many victims do not obtain restraining orders, criminal complaints or no contact orders, we agreed to the stipulation in the legislation that requires a victim to have such documentation *and* demonstrate imminent physical danger. We agreed to this because we listened to the concerns of landlord groups who wanted to ensure the bill would not cause undue financial hardship for landlords. The bill provides a reasonable and fair change to the current law regarding termination of leases.

We must also remove the barrier presented by leases that level fees or increase rent when tenants seek the help of law enforcement or emergency services. The second prong of the bill will do away with this unreasonable and dangerous disincentive facing vulnerable people who are seeking a way out. Removing this barrier will not only increase the safety of victims, but also the overall safety of our communities.

The Safe Housing Act will remove unnecessary barriers that all too often get in the way of victims seeking help and leaving sooner rather than later.

I strongly urge you to support Senate Substitute Amendment 1 to SB 269.

Thank you for your time and consideration of my remarks.

LEGAL ACTION OF WISCONSIN, INC.

MADISON OFFICE

Serving Columbia, Dane, Dodge, Green, Iowa, Jefferson, Lafayette, Rock and Sauk Counties

31 South Mills Street, Madison, Wisconsin 53715

Phone (608) 256-3304 Toll-free (800) 362-3904 Fax (608) 256-0510 Web www.legalaction.org

TO: Senate Committee on Labor, Elections, and Urban Affairs
FROM: Bob Andersen *Bob Andersen*
RE: Senate Substitute Amendment 1 to SB 269 – “Safe Housing Act”
DATE: November 28, 2007

Legal Action of Wisconsin, Inc. (LAW) is a nonprofit organization funded by the federal Legal Services Corporation, Inc., to provide legal services for low income people in 39 counties in Wisconsin. LAW provides representation for low income people across a territory that extends from the very populous southeastern corner of the state up through Brown County in the east and La Crosse County in the west. Housing Law is one of the three major priority areas of law for our delivery of legal services (the other two are public benefits and family law).

We are in favor of Senate Substitute Amendment 1 to SB 269, introduced by Senator Coggs, and its companion bill, Assembly Substitute Amendment 1 to AB 520, introduced by Representative Suder.

This legislation is the product of discussions that were held during the previous legislative session among representatives of the Wisconsin Coalition Against Domestic Violence, the Wisconsin Coalition Against Sexual Assault, representatives of tenant organizations, landlord representatives from the Wisconsin Rental Housing Legislative Council, and ourselves. The result of those discussions was essentially this bill – which the Wisconsin Rental Housing Legislative Council decided at the time that it would not support or oppose as an organization, leaving it up to its individual members to address.

The bill protects tenants who are in imminent danger of serious physical harm, by allowing them to move from their rental units. Under current law, tenants who are in imminent danger are forced to remain on their premises because they have rental obligations that they cannot dismiss. This is especially a problem where a tenant will be prevented from seeking safety because a long lease exists and the tenant will suffer a huge loss if the tenant leaves. For all but fairly wealthy tenants, a lengthy rental obligation will be prohibitive. As an example, a Madison tenant who was the victim of a sexual assault from a neighboring tenant was not allowed to break her lease by her landlord, who was quoted in the newspapers as saying that her situation is not his problem.



GREEN BAY – Brown, Calumet, Door, Kewaunee, Manitowoc and Outagamie Counties Phone (920) 432-4645 Toll-free (800) 236-1127 Fax (920) 432-5078

LA CROSSE – Buffalo, Crawford, Grant, Jackson, Juneau, La Crosse, Monroe, Richland, Trempealeau and Vernon Counties Phone (608) 785-2809 Toll-free (800) 873-0927 Fax (608) 782-0800

MIGRANT PROJECT – Statewide Phone (608) 256-3304 Toll-free (800) 362-3904 Fax (608) 256-0510

MILWAUKEE – Milwaukee and Waukesha Counties Phone (414) 278-7722 Toll-free (888) 278-0633 Fax (414) 278-7126

OSHKOSH – Adams, Fond du Lac, Green Lake, Marquette, Ozaukee, Sheboygan, Washington, Waushara and Winnebago Counties Phone (920) 233-6521 Toll-free (800) 236-1128 Fax (920) 233-0307

RACINE – Kenosha, Racine and Walworth Counties Phone (262) 635-8836 Toll-free (800) 242-5840 Fax (262) 635-8838

A number of states have recently enacted laws like the one proposed here to protect tenants who are the victims of domestic violence, sexual assault, or stalking. The following states and jurisdictions have adopted laws like our proposal *that would allow a tenant to be relieved of a lease obligation* if they are the victim of domestic abuse, sexual assault, or stalking: *Illinois, Indiana, North Carolina, Washington, D.C., Delaware, Oregon, Texas, Washington, and Colorado.*

The proposals of some of these states go beyond what we are proposing here. For example, the state of North Carolina allows a tenant to be relieved of a lease obligation if the tenant is certified to be in danger by a domestic violence shelter. Our proposal, explained below, requires a certification from a law enforcement or judicial entity.

In addition, the following states have enacted laws that are like our proposal *prohibiting landlords from evicting tenants for calling the police or emergency assistance*: *Arizona, Colorado, Minnesota, Texas.*

Finally, several states are working on *more legislation* to allow tenants to be relieved of their leases or to prohibit landlords from terminating tenancies because of calls to the police or emergency services: *Arizona, California, Florida, Kansas, Massachusetts, Michigan, New York City, New York State, and Utah.*

1. **Senate Substitute Amendment 1 to SB 269 Allows a Tenant to be Relieved of a Rental Obligation Only If Both of the Following Apply: (a) the Tenant has Documentation of the Danger that Exists and (b) the Tenant or Child of the Tenant has to be in Imminent Danger of Suffering Serious Physical Harm.**

a. **The documentation that is required must be one of the following:**

- a domestic abuse injunction under s. 813.12
- a child abuse injunction protecting the child of the tenant
- an injunction under s. 813.125 (4), protecting the tenant or child of the tenant based on the offender's engaging in an act that would constitute sexual assault under s. 940.225, 948.02, or 948.025, or attempting or threatening to do the same.
- a criminal complaint alleging that the person stalked the tenant or a child of the tenant under s. 940.32.
- a criminal complaint that was filed against the person as a result of the person being arrested for committing a domestic abuse offense against the tenant under s. 968.075.

The documentation listed above relating to injunctions, require the issuance of *injunctions* by the court. They do not authorize a tenant to be relieved of a rental

obligation where only *ex parte restraining orders* have been obtained.

- b. **The tenant or the child of the tenant must be facing an imminent threat of serious physical harm if the tenant remains on the premises.**

There has to be a connection between the danger that is posed and the tenant's remaining on the premises. It is not enough that the tenant or child is in imminent danger. It has to be shown that the tenant or child of the tenant is in danger **if the tenant remains on the premises.**

- c. **The danger must be imminent.**

It is not sufficient that a tenant or child of the tenant faces some danger in the future. The danger has to exist *now or in the immediate future.*

- d. **The danger must present a threat of serious physical harm.**

It is not sufficient that the tenant or child of the tenant faces some danger. The danger must relate to a threat of *serious harm*. And it must be *physical harm*, not emotional.

2. **It Will Be Incumbent on the Tenant to Prove in Court That (1) the Tenant Had the Necessary Documentation; (2) the Tenant or Child of the Tenant Faced a Threat of Serious Physical Harm If the Tenant Remained on the Premises and (3) the Tenant Served a Copy of the Documentation and Notice on the Landlord.**

Hopefully, the landlord in this situation will recognize the plight that the tenant is in. But, if the landlord does not do that, or the tenant has not satisfied the requirements of this legislation, *the way this will work in reality* is as follows. The tenant leaves the rental unit in the midst of the rental agreement. The landlord loses out on at least some rent [there is an obligation under the statutes for the landlord to mitigate damages – that is, to find another tenant to reduce the rent loss]. The landlord will bring an action against the tenant for unpaid rent. *The burden will then shift to the tenant, in order to be relieved of the liability, to prove all of the following, by a preponderance of the evidence:*

- the tenant had the necessary documentation; and
- the tenant or child of the tenant faced *an imminent threat of serious physical harm if the tenant remained on the premises*; and
- the tenant properly served the landlord with notice and documentation, as described below.

If the tenant fails to prove *any* of these three elements, the tenant will be liable for the unpaid rent.

3. **The Tenant Must Provide the Landlord with Formal Notice as Provided Under Current s. 704.21 and Must Provide the Landlord with a Certified Copy of the Necessary Documentation at the Same Time.**

When the tenant removes from the premises, the tenant must provide the landlord with the notice and documentation. Current s. 704.21 provides the formal requirements of notice for tenants in landlord-tenant situations:

(2) NOTICE BY TENANT. Notice by the tenant or a person in the tenant's behalf must be given under this chapter by one of the following methods:

(a) By giving a copy of the notice personally to the landlord or to any person who has been receiving rent or managing the property as the landlord's agent, or by leaving a copy at the landlord's usual place of abode in the presence of some competent member of the landlord's family at least 14 years of age, who is informed of the contents of the notice;

(b) By giving a copy of the notice personally to a competent person apparently in charge of the landlord's regular place of business or the place where the rent is payable;

(c) By mailing a copy by registered or certified mail to the landlord at the landlord's last-known address or to the person who has been receiving rent or managing the property as the landlord's agent at that person's last-known address;

(d) By serving the landlord as prescribed in s. 801.11 for the service of a summons.

4. **If the Tenant Satisfies the Requirements of the Legislation, the Tenant Will Be Relieved of a Future Rent Obligation That Begins after the End of the Month in Which the Tenant Provides the Notice and Documentation**

5. **Senate Substitute Amendment 1 to SB 269 Also Provides That a Lease of a Landlord Is Unenforceable If it Contains a Provision That Penalizes a Tenant for Having Contacted Law Enforcement Services, Health Services, or Safety Services.**

Some landlords have included in their leases provisions that penalize tenants for having called the police a number of times. As a result, tenants who are in serious danger – either from their partners in the rental units or from persons outside the rental units – do not call the police, and instead suffer the physical abuse at the hands of these culprits. This is a policy that cannot be allowed. Serious physical harm and deaths will follow.

As a result, this legislation makes a lease unenforceable if it allows a landlord to do any of the following because a tenant has contacted an entity for law enforcement services, health services, or safety services:

- Increase rent.
- Decrease services.
- Bring an action for possession of the premises.
- Refuse to renew a lease.
- Threaten to take any action under subs. (1) to (4).

The legislation makes the entire lease unenforceable, rather than just the lease provision, following the logic of the State Supreme Court in *Baierl v. McTaggart*, 245 Wis. 2d 632, 629 N.W.2d 277 (2001). In that case, the Supreme Court ruled that a lease must be held unenforceable if it contains a provision requiring tenants to pay landlords' costs and attorney fees, in violation of an administrative rule of the Department of Agriculture, Trade and Consumer Affairs. The Court said that the problem with such a lease provision is not only that it may be unconscionable or unconstitutional, but that

their existence in a lease continue to have an unjust effect because tenants believe them to be valid. As a result, tenants either concede to unreasonable requests of landlords or fail to pursue their own lawful rights.

The argument is even stronger here, where a tenant's life is at stake for believing that the tenant should not contact the police for desperately needed protection. If this is a provision that should be prohibited, then the remedy is to make it known that the whole lease will be held unenforceable; otherwise, landlords will continue to include these provisions in their leases to intimidate unwary tenants.

6. **Senate Substitute Amendment 1 Deletes a Provision in the Original Bill that Would Prohibit Municipalities from Imposing a fee on the Owner or Occupant of Property for a Call for Assistance That Is Made by the Owner or Occupant Requesting Law Enforcement, Fire Protection, or Other Emergency Services That Are Provided by the City, Village, Town, or County.**

The original bill would have enacted this prohibition, so as to remove these policies as an inducement for landlords to adopt the prohibited provisions in rental agreements described above. Because this prohibition involves a practice that raises fiscal concerns that are much larger than the scope of this bill, the substitute amendment has removed this prohibition from the bill in Senate Substitute Amendment 1 to SB 269.



Wisconsin Coalition Against Sexual Assault, Inc.

600 Williamson St., Suite N2 • Madison, Wisconsin • 53703
Voice/TTY (608) 257-1516 • Fax (608) 257-2150 • www.wcasa.org



TO: Senate Committee on Labor, Elections, and Urban Affairs
FROM: Mike Murray, Policy Specialist, Wisconsin Coalition Against Sexual Assault, Inc.
RE: **Wisconsin Coalition Against Sexual Assault Testimony in Favor of the Safe Housing Act—Substitute Amendment 1 to SB 269/AB 520**
DATE: November 28, 2007

My name is Mike Murray and I am the policy specialist for the Wisconsin Coalition Against Sexual Assault, Inc. [WCASA]. I am here to testify in favor of SB 269, which will provide important protections to victims of sexual assault and domestic violence. WCASA would like to thank Senator Cogg and Representative Suder for sponsoring this important piece of legislation that will allow victims of sexual assault and domestic violence to achieve safety and report to law enforcement without the fear financial ruin or losing their housing.

This bill accomplishes two vital objectives. First, the bill would allow a victim to cancel a lease if the tenant is both in imminent danger and provides the landlord with a copy of a protective injunction, a no contact order, or a criminal complaint for sexual assault, domestic violence, or stalking. The victim would only be liable for rent through the end of the month in which they give notice. Second, the bill voids leases that allow a landlord to increase rent, charge a fee, or evict a tenant as a penalty for the tenant's contacting law enforcement.

The lease canceling provision serves an essential public safety function. Sex predators and chronic abusers prey on victims who they know are especially vulnerable and unable to easily escape the abuse. When faced with a lengthy lease obligation, only the most economically secure victims can realistically afford to break a lease in order to achieve safety. Preventing victims from being economically forced to remain in a residence where they are unsafe will allow victims of all economic means to disrupt a perpetrator's attempts to commit repeat acts of abuse. Simply put, no victim should have to choose between economic ruin and further victimization.

The lease voiding provision is also crucial to promoting public safety and preventing crime. We must ensure that victims have unimpeded access to police protection in order to effectively protect our citizens, prosecute crimes, and prevent future crimes. Those who are most vulnerable to criminal activity should be able to report crimes and receive protection without fearing that they will lose their home. Without this assurance, efforts to protect victims and hold perpetrators accountable will be greatly frustrated.

(OVER)

This bill strikes an appropriate and carefully crafted balance between the state's interest in preventing crime, protecting victims, and the legitimate business interests of landlords. The proponents of this bill, including WCASA, have engaged in a productive dialogue with the Wisconsin Rental Housing Association in order to develop this bill. As a result, the bill requires formal documentation of a victim's plight before a victim may cancel a lease and that the victim be able to demonstrate that she is in imminent physical danger. Therefore, the "lease breaking" provision will only be available to persons who are in actual danger and have documentation of the crime.

This bill recognizes that the crimes of sexual assault and domestic violence are unique. The violence of sexual and domestic abuse is directly aimed at the victim's sense of self, her control over her own body, and her own life. For victims, especially economically disadvantaged victims, the inability to defend herself--the inability to simply call for help from the police or to live in safe place again--means that the terror of an assault stretches on for months and even years. Moreover, when a victim feels she has no ability to control her life or be safe in her own home because of economic restraints, the original violence may be all the more deeply ingrained and devastating. You have the opportunity with this bill to give victims real options that will make a significant difference to their safety and their ability to transcend the cycle of abuse.

In addition to protecting individual victims, SB 269 addresses a broad societal problem: victims of domestic and sexual violence and stalking face major obstacles in obtaining and maintaining safe housing independent from abusers. Research statistics detail the breadth and severity of housing obstacles for victims. Of all homeless women and children, 60% have been abused by age 12, and 63% have been victims of intimate partner violence as adults.¹ In addition, a survey of homeless parents (mostly mothers) in cities around the country found that 22% had fled their last home because of domestic violence. Among parents who had lived with a spouse or partner, 57% of homeless parents left their last home because of domestic violence.² SB 269 is an important first step towards remedying this alarmingly common social problem.

On behalf of WCASA and its members, I strongly urge you to support this legislation so that violent crimes may be reported, prosecuted and prevented and so that many victims of sexual and domestic violence are not needlessly required to remain helpless and vulnerable to repeated abuse.

¹ Browne, A. & Bassuk, E., "Intimate Violence in the Lives of Homeless and Poor Housed Women: Prevalence and Patterns in an Ethnically Diverse Sample," *American Journal of Orthopsychiatry*, 67(2): 261-278 (1997); Bassuk, E., Melnick, S. & Browne, A., "Responding to the Needs of Low Income and Homeless Women Who are Survivors of Family Violence," *Journal of American Medical Women's Association*, 53(2): 57-64 (1998).

² Homes for the Homeless & Institute for Children and Poverty, *Homeless in America: A Children's Story, Part One* 23 (1999).